

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

NO. 4:09-CV-126-FL

DR. ELIZABETH GAIL MARSAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EAST CAROLINA UNIVERSITY, a )  
constituent institution of the University of )  
North Carolina; DR. JAMES F. )  
ANDERSON, in his individual and official )  
capacity; DR. MADHAVA BODAPATI, in )  
his individual and official capacity; DR. )  
MARGIE GALLAGHER, in her individual )  
and official capacity; DR. MARILYN )  
SHEERER, in her individual and official )  
capacity; and DR. STEVE BALLARD, in )  
his individual and official capacity, )  
 )  
Defendants. )

ORDER

This matter is once again before the court on defendants' motion for summary judgment (DE # 48). By order entered April 15, 2011, the court denied that motion as to plaintiff's claims against defendants East Carolina University ("ECU") and Dr. James F. Anderson ("Anderson") under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983, respectively; granted the motion as to plaintiff's § 1983 claims against the other individual defendants; and held in abeyance decision on the motion as to plaintiff's Family Medical Leave Act ("FMLA") claim against ECU, directing the parties to supplement their briefs to address an argument first raised in ECU's reply brief. Those briefs have now been filed, and the issue raised is now ripe for decision.

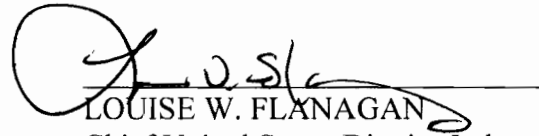
In its supplemental brief, defendant ECU states that it no longer believes it is entitled to summary judgment on plaintiff's FMLA claim on the undisputed facts before the court. As such, it is withdrawing its motion for summary judgment with respect to that claim, reserving the right to present evidence and argument on this issue at trial. Plaintiff agrees that summary judgment would not be appropriate on the facts before the court. Accordingly, with agreement of the parties, defendant ECU's motion for summary judgment as to that claim is DENIED AS MOOT where it no longer supports that aspect of the motion.

The court previously continued trial in this matter to a date and time to be noticed upon resolution of defendants' motion for summary judgment. Where that motion has since been resolved, with plaintiff's Title VII and FMLA claims against defendant ECU and her § 1983 claim against defendant Anderson proceeding to trial, this case is hereby SET for a jury trial beginning **October 17, 2011**, at the Terry Sanford Federal Building and Courthouse, Raleigh, North Carolina. The court will hold a final pretrial conference at **10:00 a.m. on October 3, 2011**, at the United States Courthouse, New Bern, North Carolina.

Where this case was automatically selected for mediation, the parties shall confer and file joint report as to the status of mediation on or before **June 13, 2011**. If the parties have completed mediation but believe that further settlement discussions could be fruitful prior to trial, they shall note this in the joint report. In particularly, the parties are directed to Local Rule 101.2, which provides for a court-hosted settlement conference before a magistrate judge or other judicial officer. If the parties desire such a court-hosted settlement conference, they shall provide in their joint report

at least three mutually agreeable days in June and/or July 2011 on which all individuals whose attendance is required by Rule 101.2(d) will be available.

SO ORDERED, this the 23<sup>rd</sup> day of May, 2011.

  
LOUISE W. FLANAGAN  
Chief United States District Judge